

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

DANTE H. PATTISON,

Case No. 3:22-cv-00537-ART-CSD

Plaintiff,

ORDER

v.

SHERIFF JOE LOMBARDO, et al.,

Defendants.

Plaintiff Dante H. Pattison brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated. On February 3, 2023, this Court dismissed Plaintiff's complaint in its entirety and ordered Plaintiff to file an amended complaint by March 5, 2023. (ECF No. 6). In that order, the Court explained that Plaintiff's 63-page long complaint with 200 pages of exhibits, 50 defendants, and 8 claims ranging from misconduct from 2015 through the present did not comply with the Federal Rules of Civil Procedure ("FRCP") and District of Nevada General Order 2021-05. (*Id.* at 3-5). In response, Plaintiff sought an extension of time to file an amended complaint and also filed motions to stand on his original complaint and have the Court screen his original complaint. (ECF Nos. 8, 11, 14). The Court eventually granted Plaintiff until May 15, 2023, to file an amended complaint. (ECF No. 13).

Plaintiff filed several more motions and eventually filed a notice of appeal with the U.S. Court of Appeals for the Ninth Circuit. (ECF No. 22). In August 2023, the Ninth Circuit dismissed Plaintiff's appeal for lack of jurisdiction. (ECF No. 26). After denying Plaintiff's miscellaneous motions on September 12, 2023, the Court granted Plaintiff one final opportunity until October 13, 2023, to file an amended complaint that complied with the FRCP and General Order 2021-05. (ECF No. 30). In response, Plaintiff appealed again, and the Ninth Circuit dismissed in part and denied in part the appeal on December 15, 2023. (ECF Nos. 31, 39). Instead of filing an amended complaint, Plaintiff filed more

1 miscellaneous filings such as notices of exhaustion and his last will and  
2 testament. (ECF Nos. 40-43, 45).

3 In September 2023, the Court warned Plaintiff that the action could be  
4 dismissed if he failed to file an amended complaint by October 13, 2023. (ECF  
5 No. 30 at 3). After that deadline expired and the Ninth Circuit dismissed in part  
6 and denied in part his appeal, Plaintiff did not file an amended complaint, move  
7 for an extension, or otherwise attempt to file an amended complaint.

## 8 **I. DISCUSSION**

9 District courts have the inherent power to control their dockets and “[i]n  
10 the exercise of that power, they may impose sanctions including, where  
11 appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los*  
12 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based  
13 on a party’s failure to obey a court order or comply with local rules. *See Carey v.*  
14 *King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to  
15 comply with local rule requiring *pro se* plaintiffs to keep court apprised of  
16 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)  
17 (dismissal for failure to comply with court order). In determining whether to  
18 dismiss an action on one of these grounds, the Court must consider: (1) the  
19 public’s interest in expeditious resolution of litigation; (2) the Court’s need to  
20 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
21 favoring disposition of cases on their merits; and (5) the availability of less drastic  
22 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
23 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th  
24 Cir. 1987)).

25 The first two factors, the public’s interest in expeditiously resolving this  
26 litigation and the Court’s interest in managing its docket, weigh in favor of  
27 dismissal of Plaintiff’s claims. The third factor, risk of prejudice to defendants,  
28 also weighs in favor of dismissal because a presumption of injury arises from the

1 occurrence of unreasonable delay in filing a pleading ordered by the court or  
2 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
3 1976). The fourth factor—the public policy favoring disposition of cases on their  
4 merits—is greatly outweighed by the factors favoring dismissal.

5 The fifth factor requires the Court to consider whether less drastic  
6 alternatives can be used to correct the party’s failure that brought about the  
7 Court’s need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,  
8 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*  
9 the party has disobeyed a court order does not satisfy this factor); *accord*  
10 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that  
11 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted  
12 pursuit of less drastic alternatives prior to disobedience of the court’s order as  
13 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
14 with the warning of dismissal for failure to comply[,]” have been “eroded” by  
15 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally  
16 dismissing a case, but must explore possible and meaningful alternatives.”  
17 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action  
18 cannot realistically proceed until and unless Plaintiff files an amended complaint,  
19 the only alternative is to enter a fifth order setting another deadline. But the  
20 reality of repeating an ignored order is that it often only delays the inevitable and  
21 squanders the Court’s finite resources. To illustrate, this Court has spent almost  
22 a year trying to get Plaintiff to comply with the Court’s orders and file an amended  
23 complaint. There is no hint that Plaintiff needs additional time or evidence that  
24 he did not receive the Court’s orders. Setting another deadline is not a  
25 meaningful alternative given these circumstances. So the fifth factor favors  
26 dismissal.

## 27 **II. CONCLUSION**

28 Having thoroughly considered these dismissal factors, the Court finds that

1 they weigh in favor of dismissal. It is therefore ordered that this action is  
2 dismissed without prejudice based on Plaintiff's failure to file an amended  
3 complaint in compliance with this Court's February 3, 2023; February 7, 2023;  
4 April 14, 2023; and September 12, 2023, orders. The Clerk of Court is directed  
5 to enter judgment accordingly and close this case. No other documents may be  
6 filed in this now-closed case. If Plaintiff wishes to pursue his claims, he must file  
7 a complaint that complies with the FRCP and General Order 2021-05 in a new  
8 case.

9 It is further ordered that Plaintiff's application to proceed *in forma pauperis*  
10 (ECF No. 27) without having to prepay the full filing fee is **granted**. Plaintiff will  
11 **not** be required to pay an initial installment fee. Nevertheless, the full filing fee  
12 will still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prison  
13 Litigation Reform Act.

14 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by  
15 the Prison Litigation Reform Act, the Nevada Department of Corrections will  
16 forward payments from the account of **Dante H. Pattison, #88986** to the Clerk  
17 of the United States District Court, District of Nevada, 20% of the preceding  
18 month's deposits (in months that the account exceeds \$10.00) until the full \$350  
19 filing fee has been paid for this action. The Clerk of the Court will send a copy of  
20 this order to the Finance Division of the Clerk's Office. The Clerk will send a copy  
21 of this order to the Chief of Inmate Services for the Nevada Department of  
22 Corrections at [formapauperis@doc.nv.gov](mailto:formapauperis@doc.nv.gov).

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1 It is further ordered that, even though this action is dismissed and is  
2 otherwise unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C.  
3 §1915, as amended by the Prison Litigation Reform Act.

4 It is further ordered that this Court certifies that any *in forma pauperis*  
5 appeal from this order would **not** be taken “in good faith” pursuant to 28 U.S.C.  
6 § 1915(a)(3).

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8 Dated this 22<sup>nd</sup> day of January 2024.

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12 ANNE R. TRAUM  
13 UNITED STATES DISTRICT JUDGE  
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